

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

PHILIP BURRIS,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-13-867-D
)	
STATE OF OKLAHOMA, ex rel.,)	
OKLAHOMA DEPARTMENT OF)	
CORRECTIONS, KACIE)	
McDONALD, Case Manager,)	
JUSTIN JONES, Director of DOC,)	
MIKE ADDISON, Warden at)	
Joseph Harp Correctional Center,)	
)	
Defendants.)	

ORDER

Plaintiff, a state inmate, brought the present action under 42 U.S.C. § 1983 and the common law. The matter was referred to United States Magistrate Judge Suzanne Mitchell for initial proceedings in accordance with 28 U.S.C. § 636(b)(1)(B). After reviewing Defendants Oklahoma Department of Corrections, Justin Jones and Mike Addison's Motion to Dismiss [Doc. No. 16], and Plaintiff's response thereto [Doc. No. 18], the Magistrate Judge recommended that the Court grant Defendants' motion in part and deny it in part [Doc. No. 20]. This Court adopted the recommendation and re-referred the matter to the Magistrate Judge [Doc. No. 22].

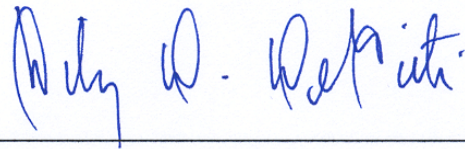
On September 3, 2015, the Magistrate Judge issued another Report and Recommendation, wherein she recommended that this Court *sua sponte* dismiss

Plaintiff's action with prejudice for failure to prosecute and comply with the Magistrate Judge's most recent order [Doc. No. 54]. Considering the factors governing *sua sponte* dismissals discussed in *Ehrenhaus v. Reynolds*, 965 F.2d 916 (10th Cir. 1992), the Magistrate Judge presented detailed findings regarding Plaintiff's failure to cooperate with discovery and communicate with his counsel, which led to his counsel withdrawing from representation. *See* Report and Recommendation at 5-7. The Magistrate Judge noted Plaintiff's actions impeded the judicial process and Plaintiff was repeatedly cautioned that his conduct, if continued, would likely lead to his action being dismissed. *Id.* at 6-7. Viewing Plaintiff's conduct in its totality, the Magistrate Judge concluded lesser sanctions would be ineffective and Plaintiff's recalcitrance warranted dismissal of his case with prejudice. *Id.* at 7.

The Magistrate Judge directed Plaintiff's former attorney to forward the Report and Recommendation to Plaintiff at his last known address. *Id.* at 8. She also advised the parties of the right to file objections to the same and directed the parties to file any objections no later than September 23, 2015. *Id.* at 8. The Magistrate Judge further admonished the parties that failure to timely object would constitute a waiver of the right to appellate review of the factual and legal issues addressed in the Report and Recommendation. *Id.* The deadline for filing objections has expired and to date, neither party has filed objections or sought an extension of time in which to do so.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 54] is **ADOPTED** as though fully set forth herein. Plaintiff's action is hereby **DISMISSED WITH PREJUDICE** for failure to prosecute. As a result of this Order, Defendants' pending Motion to Dismiss [Doc. No. 51] is deemed moot.

IT IS SO ORDERED this 15th day of October, 2015.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE